CF0000058620

(62)

XII-188/(Jail)
J.P.R.—5,000-9-81

Cr A 1166 192

Division Bench (Criminal)

APPEAL OF PRISONER

195 / Name Nani Bai

Father's name Nakee Verma

Residence Barod, P.S. Khargoda Age 40 yrs

Sentenced to Life imprisonment on 9.9.92

der section 302/201 I.P.C. by A.D.J.(II) Raigarh

Concurrently

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ∝

2 Date of which copy received 9.9.92

3 Date on which Appeal sent 10.9.92

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. 195 Name Nani Bai

ntinued in Distt Jail Raigarh

No. 1001/92 dated 10.9.92 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Raigarh

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court. M.P. High Court at Jabalpur.

Superintendent-Central / Distt / Sub-Jail

10.9.92

Date of receipt in C. J. M.'S Office 10.9.92

Date of receipt of record to accompany

Memo of Appeal of the Appeliate Court.

No. Of CJM Raigarh Dated 10.9.92 198

Forwarded to the Submitted to Sessions Judge Raigarh

C.J. Magistrate

(Basant Mala)

Chief Judicial Magistrate
RAIGARH (M. P.)

Date of receipt in Appliate Court 10.9.92

(P.T.O.)

(24)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1166 OF 1992

Noni Bai

Versus

State of Chhattisgarh

J U D G M E N T

(23)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1166 OF 1992

Noni Bai

Vs.

State of Chhattisgarh

CORAM: Hon'ble Shri Fakhruddin and
Hon'ble Shri V.K. Shrivastava, JJ

Appellant by Shri S.C. Datt, Sr. Advocate as Amicus Curiae with Ku. Sofia Khan and Smt. Nisha Chaturvedi, Advocates.

State by Shri J.D. Bajpai, Addl. Public Prosecutor/ Govt. Advocate.

Appellant is also produced in custody.

J U D G M E N T

As per Fakhruddin, J

Heard.

2. The appellant has preferred this appeal against the order dated 9-9-1992 passed by the 2nd Additional Sessions Judge, Raigarh in S.T. No. 36/1992 whereby she has been convicted for the offence punishable under Section 302 of I.P.C. and sentenced to life imprisonment on the ground that she has killed her husband. She has also been convicted for offence punishable under Section 201 of I.P.C. for giving false information and sentenced to R.I. for one year. Both the sentences to run concurrently.

3. Briefly stated the prosecution story is that P.W. 3 Pawlibai is neighbour of the accused appellant and the houses of P.W. 7 Sudarshan and the appellant are adjacent. It is contended that on 3-9-1991 when Sudarshan P.W. 7 woke up in the morning, he noticed weeping. Noticing this, he went towards the house of accused

(26)

and found that she was weeping. The Accused by gesture asked him to call the Manager. Manager Amar Singh reached on the spot and on inquiring, the appellant told that two persons had come to her house and gave a call that they want to stay. Appellant and her husband opened the door and on entry, those persons pushed her husband Nakul inside the room and one of the persons caught hold of the appellant, shut her mouth and closed her eyes. They made Nakul sitting on cot and inquired about the money. Amar Singh lodged the report vide Ex. P-18 which was recorded by Inspector Narendra Sharma P.W. 18. Narendra Sharma P.W. 18 prepared panchnama of the dead body in presence of witnesses. The body was sent for post mortem. Post mortem was conducted by Dr. M. L. Thawait P.W. 6 on 4-9-1991. It has also come in prosecution evidence that Nakul had two wives and there was no issue from first wife and he had kept appellant as his second wife but there was no issue from the second wife as well.

4. Prosecution further alleges that Nakul married to the appellant 15-16 years before and kept her as second wife but there is no issue. Since last 1½ year some quarrel used to take place between the appellant and her husband Nakul and the appellant lodged report against Nakul. The accused used to abuse Nakul. The prosecution further alleges that the accused and the deceased were together in the house and appellant has inflicted injuries and killed him and so as to screen the offender, she created this false story. The prosecution alleges that it was on 19-12-1991 that on her memorandum one Baniyan was seized and memorandum was also

(27)

recorded about the axe, but the axe could not be recovered as it was thrown in the pond. After investigation, challan was filed.

5. The appellant abjured the guilt and contended that she has been falsely implicated.

6. During trial, the prosecution examined Khisto P.W. 1, Karlus P.W. 2, Pawlibai P.W. 3, Sonsai P.W. 4, Anand Mishra P.W. 5, Dr. M. L. Thawait P.W. 6, Sudarshan P.W. 7, Rajkumar Patel P.W. 8, Vikram Sayal P.W. 9, Sodhu Das P.W. 10, Tilak P.W. 11, Amar Singh Chauhan P.W. 12, B.K. Singh P.W. 13, Shesh Deo P.W. 14, Bachandas P.W. 15, Ishwar lal P.W. 16, Ravichand Sai P.W. 17, Akshayvar Singh P.W. 18 and Narendra Sharma P.W. 19.

7. There is no eye-witnesses in the case and the case rests on circumstantial evidence. Learned trial Judge categorized the circumstances in para 8 of the judgment, which are to the following effect:-

(i) Deceased Nakul and his wife accused Noni Bai were living together in the same house. No other member of the family was living there and on the date of incident, both were seen living together. In the early morning, dead body was found in the same house;

(ii) Immediately after the incident, the accused tried to make out a false case that two persons entered into the house. One of them caught hold of Noni Bai and another caught hold of deceased Nakul and thereafter Nakul became unconscious. These two unknown persons killed Nakul

(28)

and false report to that effect was lodged by accused Noni Bai.

(iii) At the instance of accused, a blood stained Baniyan of the deceased was seized and so far as Kulhadi is concerned, she threw it in the pond;

(iv) Before the incident there was a dispute between the accused and her husband Nakul.

It will be apt to quote the para 8 of the judgment:-

"8– इस प्रकरण में अभियोजन ने जो कड़ियां प्रस्तुत करनी चाही हैं वे निम्नानुसार है:–

(1) मृतक नकुल और उसकी पत्नी अभियुक्ता नोनी बाई एक ही मकान में साथ साथ रहते थे। उनके अलावा घर में और कोई सदस्य नहीं रहता था और घटना के दिन तक ये दोनों एक साथ रहते हुए देखे गये थे। घटना के सुबह मृतक की लाश उसी के घर में पाई गई।

(2) घटना के बाद अभियुक्ता ने यह झूठा प्रकरण बनाने का प्रयास किया कि दो अज्ञात व्यक्ति घर में आये उनमें से एक ने नोनीबाई को पकड़ लिया दूसरे ने मृतक नकुल को, उसके पश्चात नोनीबाई बेहोश हो गई। इन दो अज्ञात व्यक्तियों ने नकुल की हत्या की। इसी आशय की झूठी रिपोर्ट नोनीबाई ने पुलिस को की।

(3) अभियुक्ता की निशानदेही पर मृतक की खून से सनी हुई बनियान जप्त हुई। जहां तक अपराध में प्रयुक्त हुई कुल्हाड़ी का प्रश्न है अभियुक्ता ने उसे तालाब में फेंक दिया।

(4) घटना के पूर्व नोनीबाई और उसके पति मृतक नकुल में विवाद था।"

(29)

8. Learned trial Judge convicted the accused appellant and sentenced her as mentioned above.

9. The learned trial Court found that the appellant and her husband were in the house in the night and in the morning dead body of the husband was found. It has further found that the appellant has not been able to explain as to how Nakul died and the conduct and behaviour of the appellant was unnatural. There is no injury on the person and even no scratch was found on her body to show that there was any scuffle with the strangers. She did not tell P.W. 7 Sudarshan about the fact that two persons came in the night and killed her husband. She also did not tell it to P.W. 12 Amar Singh. She only told Amar Singh that two person came and one of them caught hold of her and made Nakul to sit on the cot. She did not tell him that those two persons tied her mouth and eyes and she became unconscious.

10. Learned Sr. Counsel contended that the prosecution has not been able to lead any evidence on the basis of which it can be said that the accused is guilty. It is stated that the accused herself has admitted that the deceased and the accused were together in the night. It is on her weeping in the morning, P.W. 7 Sudarshan came and she asked by gesture to call the Manager P.W. 12 Amar Singh. Learned Sr. Counsel referred to Ex. P-18, the First Information Report lodged by P.W. 12 Amar Singh. Amar Singh P.W. 12 is Manager in SECL. In the report it is stated that in the morning at 6.00 O'clock P.W. 7 Sudarshan came to him and told that wife of Nakul had told him that in the night at about 8.00 PM two persons

(30)

came to her house and killed Nakul Prasad. Then he went to house of Nakul Prasad along with Madhusudan Lohar, Bandhan Uraon, Sudarshan Lanja and Nakul's wife told him weeping that in the night two persons came and knocked the door saying that they had come from Raigarh and when she opened the door, both of them killed Nakul by inflicting injuries by means of sharp edged weapon. Then he saw the dead body of Nakul. Blood was there near the leg of Nakul. He further stated in the F.I.R. that since he was heart patient, he could not see the dead body completely.

11. Learned Counsel further contended that the trial Court has found in para 28 of the judgment that the accused has not been able to give explanation how Nakul died in the night. He contended that the explanation is there in the FIR. She has also given explanation to P.W. 7 Sudarshan. P.W. 7 Sudarshan has stated in his evidence that in the morning when he woke up, he heard weeping and saw that Noni Bai was weeping. When he asked as to what happened, she called him by gesture. He further stated that first Noni Bai and then he entered into the house, there a lantern was lighting, he shouted as to what happened, Nakul did not reply then he lifted the lantern and saw that there were injuries near the navel and chest of Nakul. He further stated that due to fear, he came out of the house and Noni Bai also came out. Then he asked appellant as to what happened, she did not reply and gestured towards Manager Sahab then he called Manager Sahab. Learned Sr. Counsel submits that the appellant submitted explanation about the death of Nakul and contended that there is no evidence at all against the accused.

(81)

12. Shri Datta learned Sr. Counsel also pointed out that the prosecution has not placed any material to show that the explanation offered by the accused is false or incorrect.

13. Learned Sr. Counsel also contended that the deceased has received 8 injuries and it is not probable that a lady has caused such injuries.

14. Learned Counsel relied on the decision in the case of *Aher Raja Khima –v- State of Saurashtra* reported in *AIR 1956 SC 217*. Para 9 of the judgment is relevant and quoted below:-

> *"Now it may be possible to take two views of this statement but there are two important factors in every criminal trial that weigh heavily in favour of an accused person: one is that the accused is entitled to the benefit of every reasonable doubt and the other, an off-shoot of the same principle, that when an accused person offers a reasonable explanation of his conduct, then even though he can not prove his assertions, they should ordinarily be accepted unless the circumstances indicate that they are false.*
>
> *What the appellant said in this case is not impossible; such things do happen and it is understandable that the police, frustrated in their endeavour to find the culprit among three other persons, should make an all out endeavour to make sure of the fourth. We do not say that that happened here.*
>
> *But that it might have happened is obvious, and when the police absent themselves from the witness box and forestall attempts at cross-examination, we find it impossible to hold that a judge acting judicially, and bearing in mind the important principles that we have outlined above can be said to have reached an unreasonable or an unfair conclusion when he deduces from these circumstances that there is a reasonable probability that the appellant's story is true and that, therefore the confession was not voluntary."*

15. Ku. Sofia Khan, learned counsel appearing for the appellant relied on the decision in the case of *State of Karnataka –v- M.V. Mahesh* reported in *2003(2) ANJ (SC)-348*. She further relied on the

(32)

decision in the case of *Ashish Batham –v- State of Madhya Pradesh* reported in *AIR 2002 SC 3206*. Para 6 and 8 of the judgment in *Ashish Batham* (supra) are relevant and quoted below:-

> *"6. The principles, which should guide and weigh with the Courts administering criminal justice in dealing with a case based on circumstantial evidence, have been succinctly laid down as early as in 1952 and candidly reiterated time and again, but yet it has become necessary to advert to the same, once again in this case having regard to the turn of events and the manner consideration undertaken, in this case by the courts below. In Hanumant Govind Nargundkar and another –v- State of Madhya Pradesh (AIR 1952 SC 343), it has been held as follows:-*
>
> *'In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases, there is always the danger that conjecture or suspicion may take the place of legal proof and therefore, it is right to recall the warning addressed by Baron Alderson to the jury in Reg. –v- Hodge, (1838) 2 Lewin 227) where he said:-*
>
> *The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting to take for granted some fact consistent with its previous theories and necessary to render complete.'*
>
> *It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.*
>
> *These principles were needed to be restated even as late as in the decision reported in Sudama Pandey –v- State of Bihar (2002)1 SCC 679 and Subhash Chandra –v- State of Rajasthan (2002)1 SCC 702).*

(33)

8. Realities or Truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicating or punishing an accused does not arise, merely carried away by heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however, strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and grave the charge is greater should be the standard of proof required. Courts dealing with criminal cases at least should consistently remember that there is a long mental distance between may be true and must be rue and this basic and golden rule only helps to maintain the vital distinction between the conjectures and sure conclusions to be arrived at one the touch stone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record.

16. Ku. Nisha Chaturvedi, Learned Counsel appearing for appellant relied on a decision of this Court in the case of *Puran –v- State of M.P. (Now C.G.)* reported in *2004(2) CGLJ 105* wherein it has been held that merely residing together in a house and incidence occurring in the night is not sufficient to incriminate the accused.

17. Learned State Counsel on the other hand supported the judgment and finding of the trial Court. He submitted that there was no sign of scuffle on the body of the accused appellant.

18. The grievance projected for and on behalf of the appellant that on mere surmises and suspicions the appellant has been convicted has great substance and we find great force in it. The law regarding circumstantial evidence is well settled that the prosecution must prove all the circumstances connecting unbroken chain of links leading to only one inference that the accused committed the crime. If any other reasonable hypothesis of the innocence of the accused can

(34)

be inferred from the proved circumstances, the accused would be entitled to the benefit.

19. The Hon. Apex Court in the case of *Sharad Birdhichand Sarda vs. State of Maharashtra* reported in *AIR 1984 SC 1622* has held as under:

> *"The following conditions must be fulfilled before a case against an accused based on circumstantial evidence can be said to be fully established;*
>
> *(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must or should' and not 'may be' established.*
>
> *(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
>
> *(3) the circumstances should be of a conclusive nature and tendency.*
>
> *(4) they should exclude every possible hypothesis except the one to be proved, and*
>
> *(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. Case law discussed.*
>
> *A case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction."*

20. We have gone through the statements of P.W. 7 Sudarshan and P.W. 12 Amar Singh. In the present case, the conviction of the appellant has been made only on conjectures, notions and surmises.

21. Explanation has been given at the very first moment by the appellant. No evidence against the accused appellant has been collected and nothing was produced which goes to show that the statement of the accused appellant was false or incorrect. The

(35)

evidence of Sudarshan P.W. 7 and Amar Singh P.W. 12 go to show that the explanation offered by the appellant is consistent. We have also gone through the questions and answers given under Section 313 of Cr.P.C. The appellant has been consistent in her explanation. The circumstances and reasons were not even put to the appellant so that she could explain. The observation of the trial Court that she would have been cried and neighbouring persons would have come is only a conjecture. Law requires proof. Suspicion howsoever strong cannot take place of proof. In the instant case, the learned trial Court has adopted a superficial approach, manifestly erroneous and arrived at finding on notions and surmises without comprehensive appreciation of all relevant aspects of the case in their proper perspective.

22. Having considered the facts and circumstances of the case and material on record, the trial Court erred in holding that the appellant has committed murder of her husband. The findings are based on conjectures and surmises. Therefore, the appeal is allowed. The impugned order is set aside. The appellant is acquitted of the charges. The appellant is directed to be released forthwith, if not warranted in any other case.

Sd/-
Fakhruddin
Judge

Sd/-
V.K. Shrivatava
Judge